Supreme Court, U.S.
FILED

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No. 93-

In The
Supreme Court of the United States
October Term, 1993

AMERICAN BONDING COMPANY,
Petitioner,

v.

TRUSTEES OF THE CARPENTERS FOR SOUTHERN NEVADA HEALTH AND WELFARE TRUST; TRUSTEES OF THE CONSTRUCTION INDUSTRY AND CARPENTERS JOINT PENSION TRUST FOR SOUTHERN NEVADA; TRUSTEES OF THE VACATION TRUST CARPENTERS UNION NO. 1780 AND TRUSTEES OF THE SOUTHERN NEVADA CARPENTERS AND MILLWRIGHTS APPRENTICESHIP TRAINING TRUST,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEVADA

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45 pp

QUESTIONS PRESENTED

1. Whether the Employment Retirement Income Security Act of 1974 (ERISA), as a comprehensive federal statutory scheme, preempts Nevada law which allows ERISA pension trustees to recover fringe benefits under a Nevada state contractor's licensing bond of a defaulting employer.

2. Whether the decision of the Nevada Supreme Court to deny that preemption applies is a sufficient inroad to the federal statutory scheme to justify a writ directing reversal in favor of Petitioner.

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B. ORDER DENYING REHEARING of the Supreme Court of the State of Nevada in American Bonding Company v. Trustees of the Carpenters for Southern Nevada Health and Welfare Trust, et al., #24106, filed March 7, 1994

C. STATUTES

NRS 613.125
NRS 624.270
NRS 624.273

OPINION BELOW

The opinion of the Supreme Court of Nevada, dated January 20, 1994, is unreported as it was an order dismissing appeal and is reproduced at Appendix A, page 1 to this Petition.

The order denying rehearing of the Supreme Court of Nevada, dated March 7, 1994, is reproduced as Appendix B, page 1.

JURISDICTION

The decision and order of the Nevada Supreme Court was entered January 20, 1994 affirming the judgment of the trial court entered November 6, 1992, which judgment granted Respondents' counter motion for summary judgment. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257.

CONSTITUTIONAL AND STATUTE PROVISIONS INVOLVED

This case involves portions of Article VI of the Constitution of the United States, as well as 29 U.S.C. Section 1144(a), which provide as follows:

> This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, which shall be made, under the Authority of the United States shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const., Article VI.

> Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section IV(a) and not exempt under section IV(b).

29 U.S.C. Section 1144(a) aka Section 514(a) of Employment Retirement Income Security Act ("ERISA").

STATEMENT OF GROUNDS

1. In its decision, dated January 20, 1994, the Nevada Supreme Court has decided an important question of federal law in a way that conflicts with applicable decisions of the Appellate Courts of the sister state of the State of California.

2. In its decision, dated January 20, 1994, the Nevada Supreme Court has decided an important question of federal law in a way that conflicts with applicable decisions of the United States Court of Appeals for the Ninth Circuit, which is the controlling Court of Appeals for the State of Nevada.

STATEMENT OF THE CASE

The names of all parties in this case appear in the caption of the case.

The Trustees of several fringe benefit trust funds ("Trustees") representing carpentry construction workers employed in southern Nevada, administer health and

pension benefits for such union employees. The trustees filed suit seeking recovery of such fringe benefits from National Forest Products, Inc. ("National") [which sought and obtained bankruptcy protection]. Trustees joined Petitioner American Bonding Company ("American") in the suit alleging that National had breached a provision of the collective bargaining agreement which obligated National to make contributions to the carpentry's benefit trust funds on behalf of its employees. The trustees claimed that American, as the surety which issued National's contractor licensing bond, pursuant to Nevada statute, must forfeit the proceeds of the licensing bond to the trustees to cover the trust fund contributions which National had failed to make. The trustees also pursued a private company, Beal's Royal Glass & Mirror Company ("Beal's"), based upon an indemnification

agreement between Beal's and National filed with the State Contractors Licensing Board. The amount of the American bond was $20,000 and the amount of the damages sought against Beal's was unspecified.

American Bonding Company moved for summary judgment in the state district court asserting that the trustees' claims were preempted by ERISA. Trustees opposed the motion and filed a countermotion for summary judgment based upon the bond language and statutory/case law of Nevada relating to contractors licensing bonds. Beal's also moved for summary judgment against trustees. By order dated November 6, 1992, the district court judge issued its order granting the trustees' countermotion for summary judgment against American Bonding Company and ordering American to pay the proceeds of the licensing bond to trustees; the district court denied the motion for

summary judgment against Beal's.

The case was then appealed to the Nevada Supreme Court and argued on briefs and oral argument. American Bonding Company argued, in part, that, under the authority of Carpenter's Health and Welfare Fund v. Barry, 18 Cal.Rptr.2d 661, 13 C.A. 4th 1406 (1993) and Trustees of Electrical Workers Health and Welfare Trust v. Marjo Corp., 988 F.2d 865 (9th Cir. 1993), the state contractors licensing bond statutes and Nevada judicial decisions interpreting these statutes were preempted by ERISA. The Nevada Supreme Court, citing footnote No. 21 in Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 100, 103 S.Ct. 2890, 2901, 77 L.Ed. 2d 490 (1983), concluded that the Nevada contractor licensing statutes are only remotely related to ERISA and, therefore, not preempted. The Nevada Supreme Court, therefore, confirmed the trial court's grant

of summary judgment on the federal question.

ARGUMENT

I. THAT THE EMPLOYMENT RETIREMENT INCOME SECURITY ACT OF 1974 (ERISA), AS A COMPREHENSIVE FEDERAL STATUTORY SCHEME, PREEMPTS NEVADA LAW WHICH ALLOWS ERISA PENSION TRUSTEES TO RECOVER FRINGE BENEFITS ON A NEVADA STATE CONTRACTOR'S LICENSING BOND OF A DEFAULTING EMPLOYER.

Under Section 514(a) of ERISA, the federal statutes supersede any state laws "insofar as they may now or hereafter relate to any employee benefit plan". Thus, the fact that the Nevada state law discussed below was in effect prior to enactment of ERISA does not affect the analysis that ERISA supersedes any state laws which relates to an employee benefit plan.

Under ERISA, the term "state law" is defined broadly enough to encompass "almost

any imaginable legislative, judicial, or administrative action a state might take". Marcoz v. Summa Corp., 106 Nev. 737, 743, 801 P.2d 1346 (1990). The Nevada Supreme Court thereby recognizes that whether a state statute specifically mentions ERISA plans or state judicial decisions interpret such a statute to mention ERISA plans beneficially or otherwise, makes no difference.

Under Nevada law, trustee pension plans, which are now covered by ERISA, became claimants under a contractors licensing bond by judicial decision. Under N.R.S. 624.273 (Appendix C, p. 10), a claimant is entitled to recover under a contractors license bond if damaged by failure of the contractor to perform under a construction contract and the claimant is: (1) an owner of property or (2) an employee of the contractor or (3) a supplier or

materialman for the contractor or (4) is injured by any unlawful act or omission of the contractor in the performance of such contract.

The primary Nevada case recognizing plan trustees as bond claimants was decided over twenty five years ago. In Genix Supply Co. v. Board of Trustees, 84 Nev. 246, 247, 438 P.2d 816 (1968), the Nevada Supreme Court held that a contractor who agrees to make payments to a health and welfare fund under a collective bargaining agreement or other agreement and willfully fails to make such payments, is acting unlawfully. Such payments are required by N.R.S. 613.125 (Appendix C, p. 8). Such an unlawful act makes trustees a claimant on a contractors licensing bond under N.R.S. 624.273(1)(d), as the trustees are injured by the unlawful act or omission of the contractor in his failure to make the payments. The same

court went on to hold that trustees recovering such fringe benefits were entitled to the same priority under the contractors licensing bond as the claim for labor of the employee who performed the work and, as such, held that the trustees were entitled to a preferred and first claim under the bond, pursuant to N.R.S. 624.270(4). The statute at that time stated: The claim of any employer of a contractor for wages shall be a preferred claim against any such bond or deposit. (This provision is now N.R.S. 624.273(6).)

In a companion case to Genix, the Nevada Supreme Court further determined that, pursuant to N.R.S. 608.150, a general contractor is liable for the employer contributions to ERISA plan contributions for subcontractors. See Tobler and Oliver v. Board of Trustees, 84 Nev. 438, 442 P.2d 904 (1968).

The above Nevada judicial decisions make such plan trustees priority claimants in pursuit of the recovery of plan contributions against a contractors licensing bond as their claims are to be treated as labor claims.

In Carpenter's Health and Welfare Fund v. Barry, 18 Cal. Rptr. 2d 661, 13 C.A. 4th 1406 (1993), the California First Appellate District, Justice Stein held that ERISA pre-empted the California contractors licensing bond provisions. The court recognized that, because the contractors licensing bond was a method for the collection of employer contributions, such a state statutory bond is a collection method of plan benefits "used to supplement or supplant the civil enforcement scheme developed by ERISA". Such statutes are "preempted because ERISA provides its own collection methods". Id. 18 Cal. Rptr. 2d at 663.

Justice Stein said that the remedies of ERISA represent exclusive remedies and supersede state laws which purport to create parallel remedies. The California Appellate Court held that preemption was required by the recent decision of the California Supreme Court, Carpenters So. Cal. Admin. Corp. v. L. El Capitan Development Co., 53 Cal.3d 1041, 282 Cal.Rptr. 277, 811 P.2d 296 (1991), which held that trustees could not utilize mechanic lien procedures to collect employee benefits. Similarly, the Barry court recognized that contractors licensing bond statutes relate to ERISA plans "by creating the mechanism for enforcing an employer's contribution obligations that Congress did not provide." Barry, 18 Cal. Rptr. at 662, citing El Capitan, 53 Cal. 3d at p. 1045. The Court further held it is irrelevant that the state statutes provide an additional beneficial remedy to the

trustees. The statutes are preempted "because ERISA provides its own collection methods". 18 Cal. Rptr. at 663.

The California Supreme Court, in El Capitan, 53 Cal. 3d at 1049, 282 Cal. Rptr. at 285, 811 P.2d at 304, recognized that trustees are not laborers or materialmen entitled to enforce a lien. In the absence of the creation of a substantive right against a third party by state law such a collection method would not exist. In the case at bar, abstent Nevada state law which grants trustees substantive rights to recover from a third party, this collection method would not exist. This is a supplemental method of collection under state law, not provided by ERISA.

While the Nevada authority for recovery of plan benefits under a contractor licensing bond as priority claimants is the Genix case, the companion case of Tobler and

Oliver v. Board of Trustees, discussed above, was the Nevada law at issue in a recent Ninth Circuit decision. That Court found a portion of the contractors licensing statutory scheme of Nevada to be preempted. N.R.S. 608.150(1), which allowed a general contractor to be assessed for fringe benefits not paid by a subcontractor, as approved in Tobler and Oliver, was held to be a state created method of collection and, thus, improper. In Trustees of Electrical Workers Health and Welfare Trust v. Marjo Corp., 988 F.2d 865, 867 (9th Cir. 1993), the Court noted:

> The Trustees are attempting to use the Nevada statute to enforce the terms of a plan. To the extent that the enforcement mechanism of the Nevada statutes supplements those provided by ERISA, it is preempted.

The Court further stated, 988 F.2d at 868:

> No one questions that Congress intended to facilitate collection actions against employers. At the same time, there seems to be no

> support for concluding that Congress intended to allow each state to expand liability for contribution to ERISA plans as it sees fit.

In light of the above, the Ninth Circuit adopted the broad language of the United States Supreme Court in recent decisions relating to the preemption issue, specifically citing Pilot Life Inc. Co. v. Dedeaux, 481 U.S. 41, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987) and Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 107 S.Ct. 1542, 95 L.Ed.2 2d 55 (1987).

Therefore, for the Nevada Supreme Court to hold that the Nevada contractor licensing statutes are not preempted by ERISA, conflicts with the California interpretation of similar statutes pre-empting beneficial enforcement mechanisms which ERISA plans are no longer able to take advantage of. Further, such a decision is directly contrary to the position of the Ninth

Circuit Court of Appeals with regard to interpretation of preemption of federal law over similar Nevada statutes in the Nevada contractors licensing statutory scheme.

II. THAT THE DECISION OF THE NEVADA SUPREME COURT TO DENY THAT PREEMPTION APPLIES IS A SUFFICIENT INROAD TO THE FEDERAL STATUTORY SCHEME TO JUSTIFY A WRIT DIRECTING REVERSAL IN FAVOR OF PETITIONER.

The Nevada Supreme Court's determination that Nevada's contractor licensing statutes are only remotely related to ERISA and are therefore not preempted by ERISA is a conclusion relying solely upon a footnote in a 1983 case of this Court which required preemption and is one basis for the broader recognition of the pre-emption statute in ERISA as later discussed in Pilot Life and Metropolitan Life. The Nevada Supreme Court relies upon footnote 21 in

Shaw v. Delta Air Lines, Inc., 463 U.S. at 100 and 103 S.Ct. at 2901, which indicated "some state actions" would affect ERISA plans "in too tenuous, remote or peripheral" a manner to find that the state law "relates to" a plan. The case cited in the footnote indicates "peripheral affect" is the garnishment of a spouse's pension income to enforce alimony and support orders. Disposition of individual plan participants' benefits for such traditional personal obligations is remote, but a general substantive state created method of collecting money to fund plan benefits is direct involvement with a plan.

In Shaw v. Delta Air Lines, Inc., supra, this Court recognized that a federal question is presented which federal courts have jurisdiction to resolve where state law is claimed to be preempted by a federal statute which, by virtue of the Supremacy

Clause of the Constitution, must prevail. 463 U.S. at 97 and 103 S.Ct. at 2899. This Court in Shaw, also recognizes the broad scope of ERISA and that the preemptive scope of ERISA is as broad as its language. 463 U.S. at 99 and 103 S.Ct. at 2901. A state law "relates to an employee benefit plan . . . if it has a connection with or reference to such a plan". Shaw, 463 U.S. at 97, 103 S.Ct. at 2900.

Subsequent to Shaw, this Court spoke strongly of the preemptive force of ERISA's provisions and the intent to provide exclusively federal remedies under the comprehensive federal scheme. The selection of certain remedies to the exclusion of other remedies under the broad statutory federal scheme would be undermined if participants/beneficiaries in ERISA plans were free to obtain remedies under state law that Congress did not include.

Thus, Justice O'Connor, speaking for a unanimous court, in Pilot Life Ins. Co. v. Dedeaux, supra, stated:

> We have observed in the past that the express pre-emption provisions of ERISA are deliberately expansive, and designed to "establish pension plan regulation as exclusively a federal concern". 481 U.S. at 46.

The Court further stated:

> The expectations that a federal common law of rights and obligations under ERISA-regulated plans will develop, indeed, the entire comparison of ERISA's Section 502(a) to Section 301 of the LMRA (Labor-Management Relations Act of 1947), would make little sense if the remedies available to ERISA participants and beneficiaries under Section 502(a) could be supplanted by varying state laws. 481 U.S. at 56.

The Court then went on to hold that the state common law actions were preempted under Section 514(a) of ERISA, the broad pre-emption provision.

For the Nevada Supreme Court to cite footnote 21 in Shaw v. Delta Air Lines, Inc., and, without further analysis,

conclude that Nevada's contractor licensing statutes are only remotely related to ERISA and are, therefore, not preempted, is difficult to assess.

There is no question that the Nevada law through statutory and judicial decisions relating to the trustees herein affects the collection methods for plan benefits. It is not a tenuous or distant connection. Nevada law provides supplemental collection methods not set forth in ERISA.

Far more tenuous is the determination that state laws purportedly granting rights to plans to subrogate against third party tortfeasors after paying benefits as the result of the tortfeasors' conduct are preempted. Yet, such state laws are pre-empted. F.M.C. Corp. v. Holliday, 498 U.S. 52, 111 S.Ct. 403, 112 L.Ed.2d 356 (1990). Because the subrogation statute had failed to exclude employee benefit plans when

referring to any program or arrangement for payment of "benefits" (leaving the definition of benefits open-ended) the possibility of state regulation or administration existed. Such subrogation rights do not appear to present as broad a supplemental collection method as state contractor licensing bonds.

The Ninth Circuit Court of Appeals has identified four areas of state law that ERISA preempts: (1) regulation of the terms or types of plan benefits; (2) laws that create reporting, disclosure, funding or vesting requirements, (3) rules for benefit determinations or methods of calculation; or (4) remedies for misconduct in the administration of plans. Dytrt v. Mountain State Tel. and Tel. Co., 921 F.2d 889, 897 (9th Cir. 1990).

The Ninth Circuit in Trustees v. Marjo Corp., supra, recognized this Court's

opinion in F.M.C. Corp. v. Holliday, as part of the fabric of more recent cases concluding that:

> Together, these cases support a much broader reading of the ERISA pre-emption provision than we recognized in D & L Camp and Majestic Housing. 988 F.2d at 868.

The Ninth Circuit held, in Marjo Corp., that the Nevada contracting licensing statutes present a method of collection separate from those authorized in ERISA and require federal preemption.

> To the extent that the enforcement mechanism of the Nevada statute supplements those provided by ERISA, it is preempted. 988 F.2d at 867.

The primary issue is that the collection of plan benefits from a contractor licensing bond directly affects ERISA plans because it is a non-federal method of collection of plan benefits. The decision of the Nevada Supreme Court creates a direct conflict on an issue of federal law

with the determination of the Ninth Circuit Court of Appeals and California Appellate Courts. The Nevada Supreme Court has created the very diversity of interpretation of ERISA plan benefits for which the federal statutory comprehensive scheme with its development of federal common law was intended to prevent.

CONCLUSION

In ruling that the Nevada state contractor licensing bond statutes were too remote to affect a ERISA plan, the Nevada Supreme Court not only ignored the rulings of the federal Ninth Circuit and other states' determinations on the same issue, but has created the diversity and conflicting methods of collection of plan benefits which ERISA was intended to prevent.

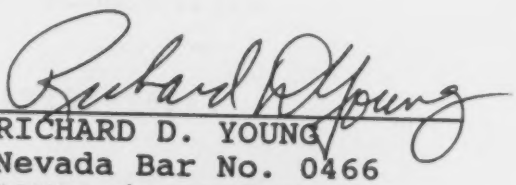
In failing to reverse the trial court's grant of summary judgment, the Nevada

Supreme Court has created an irreconcilable conflict on the federal issue of ERISA pre-emption.

Petitioner respectfully requests this Court to act immediately and reverse the erroneous determination by the Nevada Supreme Court by granting certiorari to conduct its own review of the record below.

Respectfully submitted this 20 day of May, 1994.

BELL AND YOUNG, LTD.

By 

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CERTIFICATE OF SERVICE

I, Sylvia Weber, secretary to Richard D. Young, do hereby certify that on this 20 day of May, 1994, I forwarded a true and correct copy of the foregoing PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEVADA, by first class mail, postage prepaid, upon:

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Capitol Complex
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Honorable Joseph T. Bonaventure
District Judge
Box 551601
Las Vegas, Nevada 89155-1601

Sylvia Weber

Sylvia Weber, Secretary

APPENDIX A

IN THE SUPREME COURT
OF THE STATE OF NEVADA

No. 24106

AMERICAN BONDING COMPANY,
Appellant,

v.

TRUSTEES OF THE CARPENTERS FOR SOUTHERN NEVADA HEALTH AND WELFARE TRUST; TRUSTEES OF THE CONSTRUCTION INDUSTRY AND CARPENTERS JOINT PENSION TRUST FOR SOUTHERN NEVADA; TRUSTEES OF THE VACATION TRUST CARPENTERS UNION NO. 1780 AND TRUSTEES OF THE SOUTHERN NEVADA CARPENTERS AND MILLWRIGHTS APPRENTICESHIP TRAINING TRUST,
Respondents.

Files January 20, 1994

ORDER DISMISSING APPEAL

Appeal from a district court order denying a motion for summary judgment and granting a countermotion for partial summary judgment in an action brought upon a contractor's licensing bond. Trustees represent several trust funds which

administer health and pension benefits to union employees in Southern Nevada's carpentry industry. The trust funds at issue are covered by the Employment Retirement Income Security Act of 1974 ("ERISA")[1] On May 4, 1990, appellant American Bonding Company ("American") issued a $20,000.00 contractor's licensing bond on behalf of its principal, National Forest Products, Inc. ("National"). On March 12, 1992, Trustees sued American in district court, alleging that National had breached a provision of a collective bargaining agreement which obligated National to make contributions to the carpenters' benefit trusts on behalf of its employees. Trustees asserted that American, as a compensated surety for National (which had sought and

[1]ERISA is a comprehensive federal statutory scheme which regulates employee benefit plans. 29 U.S.C. § 1001-1461 (1988).

obtained bankruptcy protection), must forfeit the proceeds of the licensing board to Trustees to cover the trust fund contributions which National had failed to make. Trustees also sued Beal's Royal Glass & Mirror Company ("Beal's"), based on an indemnification agreement between Beal's and National filed with the State Contractor's License Board. Trustees sought $20,000.00 from American and an unspecified amount of damages from Beal's.

Following a joint case conference, American moved for summary judgment under NRCP 56, asserting that Trustees' claims were preempted by ERISA. Trustees opposed the motion and made a countermotion for summary judgment based upon the language of the bond and Nevada statutory and case law applying to compensated sureties. Beal's also moved for summary judgment against Trustees. On November 6, 1992, the district

court issued an order granting Trustees' countermotion for summary judgment against American and ordering American to pay the proceeds of the licensing bond to Trustees; the district court allowed Trustees' case against Beal's to proceed. This appeal followed.

The United States Supreme Court noted in Shaw v. Delta air Lines, Inc., 463 U.S. 85, 100 n.21 (1982), that "[s]ome state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." (Citation omitted.) We conclude that Nevada's contractor licensing statutes are only remotely related to ERISA and are therefore not preempted by ERISA in cases such as the one at bar.

We have considered American's other contentions and conclude that they lack merit. Accordingly, we

ORDER this appeal dismissed.

/s/ Rose, C.J.

/s/ Stefen, J.

/s/ Young, J.

/s/ Springer, J.

/s/ Shearing, J.

cc: Hon. Joseph T. Bonaventure, Judge
Bell & Young
Morris, Brignone & Pickering
Loretta Bowman, Clerk

APPENDIX B

IN THE SUPREME COURT
OF THE STATE OF NEVADA

No. 24106

AMERICAN BONDING COMPANY,
Appellant,

v.

TRUSTEES OF THE CARPENTERS FOR SOUTHERN NEVADA HEALTH AND WELFARE TRUST; TRUSTEES OF THE CONSTRUCTION INDUSTRY AND CARPENTERS JOINT PENSION TRUST FOR SOUTHERN NEVADA; TRUSTEES OF THE VACATION TRUST CARPENTERS UNION NO. 1780 AND TRUSTEES OF THE SOUTHERN NEVADA CARPENTERS AND MILLWRIGHTS APPRENTICESHIP TRAINING TRUST,
Respondents.

Filed March 7, 1994

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

/s/ Rose, C.J.

/s/ Stefen, J.

/s/ Young, J.

/s/ Springer, J.

/s/ Shearing, J.

cc: Hon. Joseph T. Bonaventure, Judge
Bell & Young
Morris, Brignone & Pickering
Loretta Bowman, Clerk

APPENDIX C

STATUTES

The following are Nevada statutes:

1. NRS 613.125, which provides:

1. Whenever an employer has agreed with any employee to make payments to a health or welfare fund or other such plan for the benefit of the employees, or has entered into a collective bargaining agreement providing for such payments, it shall be unlawful for such employer willfully or with intent to defraud to fail to make the payments required by the terms of any such agreement.

2. Any employer who violates any provision of this section shall be guilty of a misdemeanor.

2. NRS 624.270, which provides:

1. Before issuing a contractor's license to any applicant, the board shall require that the applicant:

(a) File with the board a surety bond in a form acceptable to the board executed by the contractor as principal with a corporation authorized to transact surety business in the State of Nevada as surety; or

(b) In lieu of such a bond, establish with the board a cash deposit as provided in this section.

2. Before granting renewal of a contractor's license to any applicant, the board shall require that the applicant file with the board satisfactory evidence that his surety bond or cash deposit is in full force, unless the applicant has been relieved of the requirement as provided in this section.

3. Failure of an applicant or licensee to file or maintain in full force the required bond or to establish the required cash deposit constitutes cause for the board to deny, revoke, suspend or refuse to renew a license.

4. The amount of each bond or cash deposit required by this section must be fixed by the board with reference to the contractor's financial and professional responsibility and the magnitude of his operations, but must be not less than $1,000 or more than $50,000. The bond must be continuous in form and must be conditioned that the total aggregate liability of the surety for all claims is limited to the face amount of the bond irrespective of the number of years the bond is in force. The board may increase or reduce the amount of any bond or cash deposit if evidence supporting such a change in the amount is presented to the board at the time application is made for renewal of a license or at any hearing conducted pursuant to NRS 624.310. Unless released earlier pursuant to subsection 5, any cash deposit may be withdrawn 2 years after termination of the license in connection with which it was established, or 2 years after completion of all work authorized by the board after termination of the license, whichever occurs

later, if there is an outstanding claim against it.

5. After a licensee has acted in the capacity of a licensed contractor in the State of Nevada for not less than 5 consecutive years, the board may relieve the licensee of the requirement of filing a bond or establishing a cash deposit if evidence supporting such relief is presented to the board, but the board may at any time thereafter require the licensee to file a new bond or establish a new cash deposit as provided in subsection 4 if evidence is presented to the board supporting this requirement. If a licensee is relieved of the requirement of establishing a cash deposit, the deposit may be withdrawn 2 years after such relief is granted, if there is no outstanding claim against it.

2. NRS 624.273, which provides:

1. Each bond or deposit required by NRS 624.270 must be in favor of the State of Nevada for the benefit of any person who:

(a) As owner of the property to be improved entered into a construction contract with the contractor and is damaged by failure of the contractor to perform the contract or to remove liens filed against the property;

(b) As an employee of the contractor performed labor on or about the site of the construction covered by the contract;

(c) As a supplier or materialman furnished materials or equipment for the construction covered by the contract; or

(d) Is injured by any unlawful act or omission of the contractor in the performance of a contract.

2. Any person claiming against the bond or deposit may bring an action in a court of competent jurisdiction on the bond or against the board on the deposit for the amount of damage he has suffered to the extent covered by the bond or deposit. A person who brings action on a bond shall notify the board in writing upon filing the action. No action may be commenced on the bond or deposit 2 years after the commission of the act on which the action is based.

3. Upon receiving a request from a person for whose benefit a bond or deposit is required, the board shall notify him that:

(a) A bond is in effect or that a deposit has been made, and the amount of either;

(b) There is an action against a bond, if that is the case, and the court, the title and number of the action and the amount sought by the plaintiff; and

(c) There is an action against the board, if that is the case, and the amount sought by the Plaintiff.

4. If a surety, or in the case of a deposit, the board, desires to make payment without awaiting court action, the amount of the bond or deposit must be reduced t the extent of any payment made by the surety or the board in good faith under the bond or deposit. Any payment must be based on written claims received by the surety or board before the court action.

5. The surety or the board may bring an action for interpleader against all claimants upon the bond or deposit. If it does so, it must publish notice of the action at least once each week for 2 weeks in a newspaper of general circulation in the county where the contractor has his principal place of business. The surety or the board is entitled to deduct its costs of the action, including attorney's fees and publication, from its liability under the bond or from the deposit.

6. A claim of any employee of the contractor for labor is a preferred claim against a bond or deposit. If any bond or deposit is insufficient to pay all claims for labor in full, the sum recovered must be distributed among all claimants for labor in proportion to the amounts of their respective claims. partial payment of claims is not full payment, and the claimants may bring actions against the contractor for the unpaid balances.

7. Claims, other than claims for labor, against a bond or deposit have equal priority, except where otherwise provided by law, and if the bond or deposit is insufficient to pay all of those claims in full, they must be paid pro rata. Partial payment of claims is not full payment, and the claimants may bring actions against the contractor for the unpaid balances.